

# Daily Journal

June 13, 2019

## Retired school teacher wins \$12M in talc case against Johnson & Johnson, Colgate

By Gina Kim

Johnson & Johnson and Colgate-Palmolive Co. were found responsible Wednesday for a woman's rare, fatal cancer linked to the companies' talc products and ordered to pay \$12 million in damages, but one of the companies said it will appeal and rejected the factual finding.

The verdict is a second blow to Johnson & Johnson in Alameda County. A jury in March awarded another plaintiff \$29 million in a case with similar allegations. Nationwide, Johnson & Johnson faces roughly 10,000 claims stemming from its talc products. The company said it will appeal the verdict because its baby powder does not contain asbestos or cause cancer.

Wednesday's verdict was awarded to plaintiff Patricia Schmitz, represented by Joseph D. Satterley and Denyse F. Clancy of Kazan, McClain, Satterley & Greenwood.

Johnson & Johnson was represented by Alexander G. Calfo of King & Spalding LLP, and Colgate was represented by Gary D. Sharp of Foley & Mansfield.

Kimberly Montagnino, spokeswoman for Johnson & Johnson, said in a statement: "We will pursue an appeal because Johnson's Baby Powder does not contain asbestos or cause cancer, as supported by decades of independent clinical evidence. There were serious procedural and evidentiary errors in the proceeding that required us to move for mistrial on multiple occasions and we believe provide strong grounds for appeal."

The jury hung on awarding punitive damages as to Johnson & Johnson, whereas Colgate prevailed. Superior Court Judge Frank Roesch will decide Tuesday whether to grant a new trial on punitive damages alone, Satterley said.

Plaintiff's counsel also sought to have Calfo sanctioned for repeatedly violating court orders during closing arguments that took place last week. The sanctions motion accuses Calfo of personally attacking the court, plaintiff's counsel, and telling the jury to decide the case based on evidence from outside the courtroom and not what was presented in the case, according to the sanctions motion.

the motion states.

The motions also accused Calfo of violating orders on personal use when he informed the jury that “it was preposterous that cosmetic talc had asbestos in it, because his mother used it,” Roesch will rule on the sanctions motion June 25.

“Ms. Schmitz is very happy the jury was able to see through all the defense’s smoke and mirrors, and actually look at the evidence we introduced,” said Satterley. “She hopes this will educate other folks about the dangerous nature of these products. Johnson & Johnson powders are still being sold to this day, and should be off the marketplace.”

Schmitz, a 61-year-old retired school teacher, alleged that both companies’ talc products had presence of asbestos, which the plaintiff’s counsel alleged is commonly linked to mesothelioma and was a substantial factor in causing her cancer. She testified she used both products for years. *Schmitz v. Johnson & Johnson et al.*, RG18923615 (Alameda County Super. Ct., filed Oct. 5, 2018).

Plaintiff’s attorneys maintained that both companies knew of the risks associated with the dangers of asbestos presence in their products but failed to warn consumers or take them off the market.

Defense attorneys contended Schmitz’s mesothelioma was “naturally occurring and spontaneous,” and not caused by either company’s products.

There are different types of mesothelioma, and not all mesothelioma are caused by asbestos, the defense maintained, adding there is no scientific research that ever concluded that either products caused cancer.

Trial opened April 22 and deliberations commenced June 5.